

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER ROBERT LUTE,
Plaintiff,
v.
E. SILVA, et al.,
Defendants.

Case No. 1:20-cv-01122-NODJ-CDB (PC)
**ORDER GRANTING DEFENDANTS'
MOTION TO STAY ACTION**
(Doc. 49)

Plaintiff Christopher Robert Lute is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's Eighth Amendment excessive force claims against Defendants E. Moreno, A. Randolph, E. Romero and O. Valladolid.

I. INTRODUCTION

A Discovery and Scheduling Order issued in this matter on January 2, 2024. (Doc. 47.)

On January 10, 2024, Defendants filed a Motion to Stay Civil Action Pending Resolution of State Criminal Proceeding Against Plaintiff. (Doc. 49.) No opposition was timely filed by Plaintiff and the Court finds one unnecessary.

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1 **II. DISCUSSION**

2 ***Defendants' Motion to Stay***

3 Defendants seek a stay of this action pending resolution of criminal proceedings against
 4 Plaintiff now pending in the Kings County Superior Court. (Doc. 49.) Defendants contend this
 5 civil rights action implicates Plaintiff's Fifth Amendment rights as the ongoing criminal matter
 6 involves the same nucleus of facts (*id.* at 4-5) and that this Court should stay the action because
 7 Plaintiff's excessive force claims against Defendants may be barred by *Heck v. Humphrey*, 512
 8 U.S. 477 (1994) (*id.* at 5). Next, Defendants contend a stay is warranted under *Younger v. Harris*,
 9 401 U.S. 37 (1971) (*id.* at 6), and finally, that judicial economy supports a stay of these
 10 proceedings (*id.* at 7).

11 Relatedly, Defendants ask the Court to take judicial notice of a complaint filed September
 12 24, 2020 in Kings County Superior Court case number 20CMS-4954, a first amended
 13 consolidated information filed January 31, 2023 and a minute order dated December 20, 2023, in
 14 Kings County Superior Court case number 20CMS-1757. (Doc. 49-2.) Thus, this Court takes
 15 judicial notice of the documents in the state court proceedings. *See Harris v. County of Orange*,
 16 682 F.3d 1126, 1131–32 (9th Cir. 2012) (court may take judicial notice of “documents on file in
 17 federal or state courts”).

18 ***Applicable Legal Standards***

19 The district court “has broad discretion to stay proceedings as an incident to its power to
 20 control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (citing *Landis v. North*
 21 *American Co.*, 299 U.S. 248, 254 (1936)). A stay is discretionary and the “party requesting a stay
 22 bears the burden of showing that the circumstances justify an exercise of that discretion.” *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). “Generally, stays should not be indefinite in nature.”
 23 *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066–67 (9th Cir. 2007).
 24 If a stay is especially long or its term is indefinite, a greater showing is required to justify it.
 25 *Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). The Court should “balance the length of any
 26 stay against the strength of the justification given for it.” *Id.*
 27

1 “The Constitution does not ordinarily require a stay of civil proceedings pending the
 2 outcome of criminal proceedings.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th
 3 Cir. 1995). “In the absence of substantial prejudice to the rights of the parties involved,
 4 [simultaneous] parallel [civil and criminal] proceedings are unobjectionable under our
 5 jurisprudence.” *Id.* “Nevertheless, a court may decide in its discretion to stay civil proceedings ...
 6 ‘when the interests of justice seem[] to require such action.’” *Id.* (citations omitted).

7 When a civil plaintiff brings claims under section 1983 that are “related to rulings that
 8 will likely be made in a pending or anticipated criminal trial,” it is “common practice” for the
 9 court “to stay the civil action until the criminal case or the likelihood of a criminal case is
 10 ended.” *Wallace v. Kato*, 549 U.S. 384, 393–94 (2007).

11 When determining whether a stay is appropriate, courts look to whether the criminal
 12 defendant’s Fifth Amendment rights may be implicated by the civil proceedings. *Keating*, 45
 13 F.3d at 324 (citing *Molinaro*, 889 F.2d at 902). *See Fed. Saving & Loan Ins. Corp. v. Molinaro*,
 14 889 F.2d 899, 902 (9th Cir. 1989) (“A court must decide whether to stay civil proceedings in the
 15 face of parallel criminal proceedings in light of the particular circumstances and competing
 16 interests involved in the case. Obviously a court should consider the extent to which the
 17 defendant’s fifth amendment rights are implicated.”). Courts also consider (1) the interest of the
 18 plaintiff in proceeding with the litigation and the potential prejudice to the plaintiff of a delay;
 19 (2) the convenience of the court and the efficient use of judicial resources; (3) the interests of
 20 third parties; and (4) the interests of the public. *Keating*, 45 F.3d at 324-25.

21 Absent extraordinary circumstances, federal courts may not interfere with ongoing state
 22 criminal proceedings. *See Younger*, 401 U.S. at 43-54; *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S.
 23 69, 77 (2013). A court may consider *sua sponte* whether *Younger* abstention should be invoked
 24 at any point in the litigation. *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000).
 25 Abstention is proper regardless of whether the applicant seeks declaratory relief, injunctive
 26 relief, or damages. *See Mann v. Jett*, 781 F.2d 1448, 1449 (9th Cir. 1986) (“When a state
 27 criminal prosecution has begun, the *Younger* rule directly bars a declaratory judgment action” as
 28 well as a section 1983 action for declaratory relief and damages “where such an action would

1 have a substantially disruptive effect upon ongoing state criminal proceedings"); *Gilbertson v.*
2 *Albright*, 381 F.3d 965, 984 (9th Cir. 2004) (en banc) (*Younger* abstention applies to actions for
3 damages as it does to declaratory and injunctive relief).

4 A court may apply a stay under *Younger* when: "(1) the state court proceedings are
5 ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings
6 provide an adequate opportunity to raise the constitutional claims." *Escobar v. LASD Male Doe*,
7 No. CV-17-7352-DSF (SP), 2017 WL 7050642, at *2 (C.D. Cal. Nov. 30, 2017) (citing
8 *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982)).

Analysis

In Kings County Superior Court case number 20CM-4954, Plaintiff was charged with a felony count of assault by a prisoner with a deadly weapon, here, a “DME cane,” in violation of California Penal Code section 4501(a), and one felony count of resisting an executive officer in violation of California Penal Code section 69, involving Defendant Romero. (Doc. 49-2 at 5-6.) As to the latter, the use of the DME cane was also alleged to be a serious felony within the meaning of California Penal Code sections 667(a)(1), 1192.7(c)(11) and 12022(b)(1). (*Id.* at 7, 9.) Further, Plaintiff was charged with felony counts of resisting an executive officer in violation of California Penal Code section 69, involving Defendants Moreno and Valladolid. (*Id.* at 8.) Finally, as to all involved counts, it was further alleged Plaintiff had suffered prior serious and violent felonies within the meaning of California Penal Code sections 1170.12(a) through (d). (*Id.* at 8-9.) That matter was consolidated with Kings County Superior Court case number 20-CMS-1757 on January 31, 2023. (See Doc. 49 at 2 & Doc. 49-1, ¶ 2 [Bhangoo Decl.].)

22 In Kings County Superior Court case number 20CMS-1757, the first amended
23 consolidated information alleges Plaintiff committed felony battery of a non-confined person in
24 violation of California Penal Code section 4501.5 and felony resisting an executive officer in
25 violation of California Penal Code section 69, as to Defendant Romero. (Doc. 49-2 at 13.) As to
26 those counts, various special allegations concern the use of a deadly weapon and prior serious
27 felony convictions pursuant to California Penal Code sections 667(a)(1), 1170.12(a)-(d),
28 1192.7(c) and 12022(b)(1). (*Id.* at 13-15.) The consolidate criminal case was scheduled for trial

1 setting proceedings on January 29, 2024. (Docs. 49 at 2 & 49-2 at 19.)

2 The present civil rights action implicates Plaintiff's Fifth Amendment rights. The facts
 3 and circumstances underlying Plaintiff's criminal prosecution for felony battery by a prisoner on
 4 a non-prisoner involving a deadly weapon and felony resisting an officer by means of force or
 5 threat involving Defendant Romero, substantially overlap with the excessive force claims at
 6 issue in this case. Both cases involve the June 10, 2020 incident between Plaintiff and the
 7 Defendants and will likely involve substantially the same parties and witnesses. Thus, if this case
 8 proceeds, Defendants will seek discovery from Plaintiff, and he will be required to respond under
 9 oath. The discovery will involve Plaintiff's alleged misconduct on June 10, 2020. Thus, there
 10 exists a substantial risk of prejudice to Plaintiff's Fifth Amendment rights. Furthermore, if
 11 Plaintiff invokes his Fifth Amendment rights it may impede Defendants' discovery. *Jones v.*
 12 *Conte*, No. C045312S1, 2005 WL 1287017, at *1 (N.D. Apr. 19, 2005) (finding that a stay of the
 13 civil case involving defendant in criminal action was appropriate "because [i]f discovery moves
 14 forward, [the] defendant will be faced with the difficult choice between asserting [his] right
 15 against self-incrimination, thereby inviting prejudice in the civil case, or waiving those rights,
 16 thereby courting liability in the civil case") (internal quotations & citation omitted).

17 Likewise, the other *Keating* factors also support a stay. Any prejudice to Plaintiff is
 18 minimal given that both proceedings involve similar facts and witnesses, and it is unlikely that
 19 evidence will be lost, or memories will fade with passage of time. *McCormick v. Rexroth*, No. C
 20 09-4188 JT, 2010 WL 934242, at *3 (N.D. Cal. Mar. 15, 2010). In addition, the public interest
 21 weighs in favor of a stay because "[t]he public has an interest in ensuring that the criminal
 22 process is not subverted by ongoing civil cases." *Douglas v. United States*, No. C 03-4518, 2006
 23 WL 2038375, at *6 (N.D. Cal. July 17, 2006) (quotation and citation omitted).

24 Furthermore, if a stay is not granted, the defenses available may be limited. If the court in
 25 the state court criminal action considers Plaintiff's factual allegations regarding the June 10, 2020
 26 incident, such findings may be binding in this Court. Until resolution of the criminal
 27 proceedings, it is unclear whether certain defenses are available, such as a *Heck* bar or issue
 28 preclusion. See *Wallace*, 549 U.S. at 393–94 (noting that the question of whether a section 1983

1 action is barred by *Heck* is more difficult to answer where the plaintiff is facing charges of
 2 resisting arrest or similar conduct arising from the same incident he is claiming excessive force,
 3 and concluding a stay may be appropriate until such time as the underlying criminal proceedings
 4 are conducted). “If the plaintiff is ultimately convicted, and if the stayed civil action would
 5 impugn that conviction, *Heck* will require dismissal; otherwise, the civil action will proceed,
 6 absent some other bar to suit.” *Id.* (citation omitted); *see Vivas v. Cty. of Riverside*, No. EDCV
 7 15-1912-VAP (DTBx), 2016 WL 9001020, at *3 (C.D. Cal. Jan. 12, 2016) (staying excessive
 8 force case where criminal prosecution for resisting arrest was pending).

9 Judicial efficiency also favors imposition of a stay because Plaintiff’s criminal action
 10 involves many of the same facts as alleged in this action. Accordingly, the Court will stay this
 11 action until Plaintiff’s criminal charges have been resolved.

12 Even if a stay is not warranted under the former analysis, a stay is warranted under
 13 *Younger. Escobar*, 2017 WL 7050642, at *2. Here, Plaintiff’s criminal case is ongoing and
 14 implicates the State of California’s important interest in ensuring the integrity of its criminal
 15 justice system. *See Kelly v. Robinson*, 479 U.S. 36, 49 (1986) (“the States’ interest in
 16 administering their criminal justice systems free from federal interference is one of the most
 17 powerful of the considerations that should influence a court considering equitable types of
 18 relief”). Indeed, Plaintiff may raise constitutional issues in the state proceedings. *See Pennzoil*
 19 *Co. v. Texaco*, 481 U.S. 1, 15 (1987) (“a federal court should assume that state procedures will
 20 afford an adequate remedy, in the absence of unambiguous authority to the contrary”). In
 21 addition, Plaintiff is seeking damages in this civil action. (Doc. 24 at 6.) *Mann*, 781 F.2d at 1449;
 22 *Gilbertson*, 381 F.3d at 984. Accordingly, it is clear that principles of judicial comity authorize
 23 the Court to stay this action until Plaintiff’s criminal proceedings have concluded.

24 **III. CONCLUSION AND ORDER**

25 For the reasons given above, **IT IS HEREBY ORDERED** that:

26 1. Defendants’ motion to stay this action (Doc. 49) is **GRANTED**;

27 2. The instant action is **STAYED** pending resolution of Plaintiff’s criminal case; and

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4 || IT IS SO ORDERED.

Dated: February 2, 2024

Chris D. Brown

UNITED STATES MAGISTRATE JUDGE